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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK NELSON,

Defendant and Appellant.

A104033

(Humboldt County
Super. Ct. No. CR031564BS)

Defendant Mark Nelson appeals from an order imposing a restitution fine as a condition of probation. We affirm.

BACKGROUND

The facts may be briefly stated. Defendant pleaded guilty to assault with force likely to produce great bodily injury and no contest to a special allegation that he had personally inflicted great bodily injury. The court dismissed an additional charge of battery with serious bodily injury, imposed a term of seven years, suspended execution of sentence and placed defendant on five years' probation.

Defendant had also been charged in juvenile court with committing arson on the night of the assault.¹ As part of the disposition in the assault case, the district attorney agreed to dismiss the juvenile petition in exchange for defendant's payment of restitution. The agreement was documented by a letter from the district attorney. The probation officer recommended restitution of \$30,000 for the burned building.

Defense counsel stated at the September 18, 2003 sentencing hearing that he was “a little leery” about the restitution condition and amount. He asked the court to set a further hearing, asserting the need for “some sort of official minutes or record from the juvenile court, indicating that that is what the Court intended, before this Court assumes jurisdiction. [¶] I really think that it would be a problem on appeal if we took jurisdiction without dotting the i’s and crossing the t’s in terms of subsuming a confidential juvenile matter without a better record than we have.” The prosecutor maintained that the district attorney’s letter outlining the agreement was sufficient, but agreed to a further hearing to allow defense counsel to present any documentation he felt was pertinent.

The court stated it would order restitution but deferred ruling on the amount to be paid. It then offered to set a hearing in three weeks to address defense counsel’s concerns. Counsel declined. He explained: “I think that it is something that the Appellate Court will address, as long as the Court has made the ruling that it’s going to accept jurisdiction over that matter.” The court ordered restitution in an amount to be determined, and set a restitution review and a restitution hearing for November 6 and 18, respectively. Defendant filed his notice of appeal on September 23, 2003.²

DISCUSSION

Defendant contends the restitution order is erroneous because (1) the court lacked jurisdiction to enforce the plea agreement in the juvenile proceeding; and (2) the damages resulting from the arson were unrelated to either the assault or future criminality.

As to the first point, defendant offers only that “[a] criminal court lacks jurisdiction to make any order in a juvenile case.” In support he cites *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 710 (*Wong*), which states the superior court lacks jurisdiction to make orders in juvenile court proceedings absent a certification order from the juvenile court. *Wong*, however, does not address the superior court’s jurisdiction *in a*

¹ Defendant turned 18 on January 26, 2003, a few days after the assault and fire.

² Neither party has informed this Court of the outcome of those hearings or addressed whether this appeal is ripe in light of the anticipated further rulings. In the interest of judicial economy and efficiency, however, we will nonetheless address the court’s September 18 order.

criminal case to impose a condition of probation in exchange for dismissal of an independent juvenile proceeding. Defendant provides no authority undermining application of the settled principle that, in appropriate circumstances, courts may order restitution as a probation condition for losses caused by conduct underlying uncharged or dismissed counts. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121; *People v. Goulart* (1990) 224 Cal.App.3d 71, 79.)

Counsel fails to properly characterize the action taken in the criminal case. Here the sentencing court was not assuming jurisdiction over a juvenile matter. Instead it was sentencing an adult pursuant to a plea agreement. One aspect of the agreement was that restitution could be ordered for conduct in addition to the crime to which defendant pled guilty. The court was empowered to do so by virtue of the agreement itself and the existing case law.

To the extent defendant argues the documentation of the juvenile court plea agreement was inadequate, he has waived the contention. Offered the opportunity to support his claim of inadequacy, counsel deferred in favor of having this Court resolve the issue. We decline to do so. It was defendant's burden to provide the trial court with the evidence and law supporting his position. Because he declined to do so, and to provide the district attorney an opportunity to respond, this Court lacks an adequate record on which to review his claim. (See *People v. Welch* (1993) 5 Cal.4th 228, 234-235.)

Defendant's assertion that the restitution is not reasonably related to the assault or to future criminality was also waived by his failure to object on that ground at sentencing. (*Welch, supra*, 5 Cal.4th at pp. 234-235.) In any event, the court properly imposed the restitution condition, pursuant to defendant's agreement, as part of a negotiated disposition. We find no error.

DISPOSITION

The order is affirmed.

Corrigan, J.

We concur:

McGuiness, P.J.

Pollak, J.